ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PATRICK LOWRANCE,

APPELLANT

APPELLATE CASE NO. 2012-213300

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of possession of a stolen vehicle when the State failed to present any substantial evidence beyond a reasonable doubt that the vehicle was stolen except for hearsay?

STATEMENT OF THE CASE

Appellant was tried before the Honorable Steven H. John in Greenville County on October 8 – 11, 2013, for possession of a stolen vehicle, failure to stop for a blue light, two (2) counts of attempted murder, and possession of a weapon. The jury found appellant guilty of possession of a stolen motor vehicle and was deadlocked on the remaining charges. A mistrial was declared on the remaining charges. Appellant was sentenced to three (3) years suspended to probation on the vehicle charge. Brian Johnson, Esquire, and John Crangle, Esquire, were the trial attorneys. Lucas C. Marchant, Esquire, was the assistant deputy solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of possession of a stolen vehicle because the State failed to present any substantial evidence beyond a reasonable doubt that the vehicle was stolen other than objected to hearsay.

The indictment charging appellant with possession of a stolen vehicle alleged:

> That PATRICK DEAN LOWRANCE did in Greenville County, on or about the 28th day of October, 2011, willfully and unlawfully receive, possess, conceal, sell or dispose of a motor vehicle belonging to DELONDA M. GRESHAM described as a 2005 GMC Yukon, valued at more than Ten Thousand Dollars and PATRICK DEAN LOWRANCE was not entitled to possession of the vehicle and knew the vehicle was stolen or converted under circumstances constituting a crime. This is in violation of § 16-21-0080 of the South Carolina Code of Laws (1976) as amended.

There was testimony at trial from Officer Brittany Cruell that on October 28, 2011, she was at the Comfort Inn in Greenville on Laurens Road checking on vehicles because they had found stolen vehicles there in the past. She said she "came across a Chevy Tahoe that had a wrong tag on it. The tag came back to a Honda, I believe." She looked at the vehicle information number in the windshield, but it was covered up by an air freshener. This made her suspicious. (Tr. p. 82, lines 11 – 24).

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charge of possession of a stolen vehicle. (Tr. p. 259, lines 15 – 25). The trial court denied the motion finding there was substantial circumstantial evidence the vehicle was stolen. (Tr. p. 261, lines 4 – 15).

The next morning, the trial court remarked that it thought about the matter overnight and realized that there was no testimony from anyone saying the vehicle was stolen. Therefore, he was

going to allow the State to re-open their case to present further evidence on the issue of possession of a stolen vehicle. (Tr. p. 264, lines 2 – 18). The State then called Detective Conroy to testify. He said he spoke with the owner of the vehicle, told her name, met with her, and checked her driver's license number to confirm that she was the rightful owner. He then testified that the owner told him that no one had permission to drive the vehicle. Defense counsel objected that this was hearsay. The trial court struck the last statement by Detective Conroy and asked the jury to disregard it. (Tr. p. 266, line 13 – p. 267, line 15). After the State rested for their second time, defense counsel again moved for a directed verdict to the charge because the only testimony about anybody having permission to use the vehicle was struck as hearsay. The trial court again denied the motion. (Tr. p. 269, line 3 – p. 270, line 7). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

> [T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is "sufficient to raise a strong suspicion of the guilt of the accused" is not sufficient to constitute "any evidence form which the guilt of the accused may be fairly and logically deduced." State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, "where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused's guilt." State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). "If the evidence is consistent with both innocence and guilt it cannot support a conviction." United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a "rationally supportable state of near certitude." Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

The State simply failed to prove that appellant was not entitled to possession of the vehicle as the indictment charged.

CONCLUSION

A directed verdict should be granted on the charge of possession of a stolen vehicle.

Respectfully submitted,

Robb M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of May, 2013.